

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Richard Lee Mitchell,

Petitioner

v.

State of Nevada, et al.,

Respondents

Case No.: 2:20-cv-02044-JAD-EJY

**Order Dismissing Habeas Petition  
as Unexhausted**

[ECF Nos. 1, 1-1, 1-2]

Petitioner Richard Lee Mitchell filed this *pro se* petition for writ of habeas corpus under 28 U.S.C. § 2254 to challenge his 2018 and 2019 Nevada state-court convictions.<sup>1</sup> He applies to proceed in forma pauperis and asks the court to appoint him counsel.<sup>2</sup> Although I grant his application for in forma pauperis status, I dismiss his petition without prejudice as unexhausted and deny as moot his request for court-appointed counsel.

**Discussion**

A federal court will not grant a state prisoner's petition for habeas relief until the prisoner has exhausted available state remedies for all claims raised.<sup>3</sup> A petitioner must give the state courts a fair opportunity to act on each of the claims before she or he presents those claims in a federal habeas petition.<sup>4</sup> A claim remains unexhausted until the petitioner has given the highest

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<sup>1</sup> ECF No. 1-1.

<sup>2</sup> ECF No. 1.

<sup>3</sup> *Rose v. Lundy*, 455 U.S. 509 (1982); 28 U.S.C. § 2254(b).

<sup>4</sup> *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995).

1 available state court the opportunity to consider the claim through direct appeal or state collateral  
2 review proceedings.<sup>5</sup>

3 Here, Mitchell challenges his conviction entered upon a guilty plea but states that he did  
4 not file a direct appeal or a state postconviction habeas corpus petition. He therefore has not  
5 exhausted his state-court remedies with respect to any of his claims. The court also notes that  
6 Mitchell states that he has filed this petition more than one year after his judgment of conviction  
7 was filed, so it appears to be untimely, too.<sup>6</sup> Accordingly, this federal petition is dismissed  
8 without prejudice.

### 9 Conclusion

10 IT IS THEREFORE ORDERED that **the Clerk of Court is directed to** detach and file  
11 the petition [ECF No. 1-1] and petitioner's motion for appointment of counsel [ECF No. 1-2].

12 IT IS FURTHER ORDERED that the petition is **DISMISSED** without prejudice, **and a**  
13 **certificate of appealability is DENIED** because jurists of reason would not find this result  
14 debatable or wrong.

15 IT IS FURTHER ORDERED that the application to proceed in forma pauperis [ECF No.  
16 1] is **GRANTED**.

17 IT IS FURTHER ORDERED that the motion for appointment of counsel [ECF No. 1-2]  
18 is **DENIED** as moot.

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22 <sup>5</sup> See *Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374,  
23 376 (9th Cir. 1981).

<sup>6</sup> 28 U.S.C. § 2244(d).

1 IT IS FURTHER ORDERED that the Clerk of Court is directed to **ENTER**  
2 **JUDGMENT accordingly and CLOSE THIS CASE.**

3 Dated: December 14, 2020

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6 U.S. District Judge Jennifer A. Dorsey  
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